Supreme Court, U.S.
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91-1917

CASE NO. _____

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1992

GARY A. EDGMON and
JIMMY W. EDGMON,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Whether the Due Process Clause of the Fifth Amendment requires an FmHA borrower to be given adequate notice of that FmHA borrower's right to post-disposition approval of collateral as provided for by 7 C.F.R. §§ 1962.18 (b) (1), (2).

LIST OF PARTIES

The parties to the proceedings below were the petitioners, Gary A. Edgmon and Jimmy W. Edgmon and the respondent the United States of America.

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1992

GARY A. EDGMON AND JIMMY W. EDGMON, Petitioners,

v.

UNITED STATES OF AMERICA, Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

The petitioners, Gary A. Edgmon and Jimmy W. Edgmon respectfully pray that a writ of certiorari issue to review the judgement and opinion of the United States Court of Appeals for the Tenth Circuit, entered in the above-entitled proceeding on December 23, 1991.

OPINIONS BELOW

The opinion of the Court of Appeals for the Tenth Circuit is reported at 952 F.2d 1206, and is reprinted in the appendix hereto, p. 6-A, infra.

The decision of the United States District Court for the Western District of Oklahoma (Thompson, D.J.) has not been reported. It is reprinted in the appendix hereto, p.6-U, infra.

JURISDICTION

The petitioners were convicted for violating 18 U.S.C. § 658 (conversion of property mortgaged to FmHA) and 18 U.S.C. § 371 (conspiracy to violate § 658). Additionally, petitioner Jimmy W. Edgmon was convicted of violating 18 U.S.C. § 1956(a)(1)(b)(i)(money laundering).

On petitioners' appeal, the Tenth Circuit on December 23, 1991, entered a judgement affirming the decision of the United States District Court for the Western District of Oklahoma. See p.6-S, infra. No petition for rehearing was sought.

On March 6, 1992, Mr. Justice White ordered that the time for filing this petition for writ of certiorari be extended to and including April 21, 1992.

The jurisdiction of this Court to review the judgement of the Tenth Circuit is invoked under 28 U.S.C. § 1254(1).

REGULATIONS INVOLVED

7 C.F.R. § 1962.16. Accounting by County Supervisor

(a) County Supervisor's responsibilities. ... All chattel security will be inspected at least annually by the County Supervisor. ... At the time of the annual inspection the County Supervisor will discuss the provisions of §§ 1962.17 and 1962.18 of this subpart with the borrower, and the borrower and the County Supervisor will complete and sign Form 1962-1, in accordance with § 1924.57(b) of Subpart A of Part 1924 of this chapter if it has not been previously completed for the year.

7 C.F.R. § 1962.18 (1990). Unapproved disposition of chattel security

(a) General. When the County Supervisor learns that a borrower has made disposition of chattel security in a manner not provided for on Form FmHa 1962.1 or becomes aware of the misuse of proceeds by a borrower, corrective action must be taken to protect the Government's interest.

(b) Notice to borrowers. When a borrower has not properly accounted for the use of proceeds from the sale of chattel security, the County Supervisor must request restitution by the use of a letter similar to Guide Letter 1962-A-5.

(1) If the borrower makes restitution or provides sufficient information to enable the County Supervisor to post-approve the transaction on Form FmHa 1962-1, no further action will be taken against the borrower. Post-approval can only be given under the conditions set out in 1962.17(b) of this subpart.

(2) If the borrower does not make restitution, if the County supervisor cannot post-approve the transaction, or if the borrower makes a second unauthorized disposition of security or a misuse of proceeds after settling the first offense as provided in paragraphs (a) and (b) of this section, the County Supervisor will proceed in accordance with § 1962.49 of this subpart.

STATEMENT OF THE CASE

Petitioners are farmers in Oklahoma. In October of 1987, Gary A. Edgmon obtained a loan from FmHA (Farmers Home Administration) for operating and family living expenses in the amount of $200,000 (the maximum permitted) and in return granted FmHA a security interest in his cattle and other items in order to secure the loan. After paying $12,800 of the principal on this loan Gary borrowed $12,800 from FmHA in October of 1988, returning him to the $200,000 loan limit.

Each year a borrower is subject to an annual collateral inspection by the County Supervisor. At this meeting, the farmer-borrower and the County Supervisor must "discuss" the provisions of 7 C.F.R. §§ 1962.17-18 and sign a Form 1962-1. 7 C.F.R. § 1962.16. This form provides that when proceeds from the disposition of security are to be used to pay essential family living or farm operating expenses, County Supervisors must approve the

disposition. The form also details what essential family living and farm operating expenses are. 7 C.F.R. § 1962.17(b).

During May, June and July of 1989, Gary A. Edgmon sold a number of his cattle in which FmHA had a security interest. These sales were made through Jimmy W. Edgmon, checks payable to Jimmy. Neither FmHA nor Gary's name appeared on the cattle sales.

Prior to June 24, 1989, Gary A. Edgmon applied for a new loan. Soon after this request FmHA scheduled a collateral inspection of Gary's farm for August 8, 1989. After failing to appear at this inspection, Gary informed the County Supervisor that he had sold his cattle securing his previous loans. FmHA then sent out a letter demanding restitution of the proceeds of the collateral and warned Gary that if he failed to resolve the problem, FmHA would refer the matter to the United States Attorney for criminal prosecution. At no time was Gary A. Edgmon adequately informed that he had the right to seek post-disposition approval of the secured collateral. Trial Transcript, Vol II at 31-34, appendix, p. 6-EE. 7 C.F.R. § 1962.18. Instead, the County Supervisor immediately referred the case for prosecution. However, at trial, the County Supervisor admitted that Gary's expenses were of the type that he must post-approve. Trial Transcript, Vol II at 49, appendix, p. 6-II.

On December 10, 1990, at trial, the Edgmons were convicted of four counts of conversion of FmHA collateral in violation of 18 U.S.C. § 658 and one count of conspiracy to convert in violation of 18 U.S.C.§ 371. Jimmy W. Edgmon was also found guilty of one count of money laundering in violation of 18 U.S.C. § 1956(a)(1)(b)(i). Gary A. Edgmon was sentenced to 12 months on counts one to five to run concurrently. Jimmy W. Edgmon was sentenced to 33 months on counts one to six to run concurrently. Additionally, the Edgmons were each ordered to pay restitution in the amount of $153,062.14. The Edgmons appealed to the Tenth Circuit which affirmed on December 23, 1991. None of these charges could have been filed if Gary had been informed of his post-disposition approval rights and such post-disposition had been approved.

REASONS FOR GRANTING THE WRIT

I.

Whether the Due Process Clause of the Fifth Amendment requires an FmHA borrower to be given adequate notice of that FmHA borrower's right to post-disposition approval of collateral as provided for by 7 C.F.R. §§ 1962.18(b)(1), (2).

The Due Process Clause of the Fifth Amendment requires adequate notice be given to an FmHA borrower of that FmHA borrower's right to post-disposition approval of collateral. According to the Department of Agriculture, as of September 30, 1991, FmHA had loaned $2,037,688,000 to

25,941 farmers for that year. A farmer who is convicted of conversion of collateral can, as the case of Petitioners show, loose both property and freedom. That this fate may be avoided with simple, adequate notification of a right given by law, that of post-disposition approval of collateral, makes the penalties all the more severe, offending the basic principals of Due Process.

It is well established that a United States agency must violate an individual's life, liberty or property interests in order to effect his Fifth Amendment Due Process rights. In the case of the Edgmons, the impact of not providing adequate notice of the right to post-disposition approval of collateral as afforded by 7 C.F.R. § 1962.18(b)(1), (2), resulted in a deprivation of the petitioners' individual liberty and property. Prison terms were assessed and restitution was ordered. **Ingraham v. Wright,** 430 U.S. 651, 674 (1977) (although a State case, the principal applies equally to the Federal Government).

It is a well established principal that an agency must strictly follow its prescribed regulations as if the equivalent of statutory provisions. **Simmons v. Block,** 782 F.2d 1545, 1550 (11th Cir. 1986), **Payne v. Block,** 714 F.2d 1510, 1517 (11th Cir. 1983), **Berends v. Butz,** 357 F.Supp. 143 (D. Minnesota, 1973). The intent of 7 C.F.R. § 1962.18 is to provide adequate notice to the farmer-borrower of his right to seek post-disposition approval of collateral. However, regarding adequate notice, intent and practice are separated by a vast chasm awaiting the unwary farmer-borrower.

Fundamentally, an inadequate procedure exists to require FmHA to give notice of a farmer-borrower's right to post-disposition approval of collateral. According to 7 C.F.R. § 1962.16, at the time of the annual inspection, the County Supervisor must discuss the provisions of 7 C.F.R. §§ 1962.17-18 with the buyer. Although the later of these two regulations contains amongst other items, the critical post-disposition approval language, the farmer at this conference is inundated with C.F.R. provisions and is thus expected thereafter to grasp the complexities within those regulations. Trained attorneys would require more for a firm understanding. Further, is it not necessarily at the annual inspection when the farmer would have to request post-disposition approval of collateral. In fact, the difference in timing between discussion of the regulations and use of a post-disposition request can be rather extreme. Therefore, after a once a year review, the farmer-borrower must understand and remember the requirements of 7 C.F.R. §§ 1962.17-18, or face possible imprisonment and loss of property. This places the farmer-borrower after the annual inspection, in a position where he is in actuality, no more informed than before. As added emphasis, in Gary A. Edgmon's case the County Supervisor could not even recall that he had preformed this vital procedure. Trial Transcript, Vol II at 46, appendix, p. 6-JJ. Due Process requires more then this sort of notice.

This Court in **United States v. Kimbell Foods, Inc.,** 440 U.S. 715, 735 (1979), recognized that FmHA lending programs are a form of social welfare and thus require FmHA to behave differently from a private lender. Broad

social welfare goals mandate careful protection of the farmer-borrower. See also, **Curry v. Block,** 541 F.Supp. 506, 509-511 (S.D. Georgia, 1982), **Gamradt v. Block,** 581 F.Supp. 122, 127-128 (D. Minnesota, 1983). It logically follows that there must be adequate notice given of an important regulatory right.

In **Allison v. Block,** 556 F.Supp. 400, 405 (W.D. Missouri, 1982), the Court determined that 7 U.S.C. § 1981(a) (FmHA loan deferral relief) required adequate notice to the farmer-borrower of its provisions despite the fact that the farmer-borrower had to request relief. The Court emphasized that without knowledge of the right to request relief, the provision would be futile.

Gary A. Edgmon was not clearly informed of his right to request post-disposition approval of collateral. The same letter that Gary received demanding restitution should have also given notice of said post-disposition rights. Instead, he was forced to remember and act upon the complex web of rules reviewed at the annual inspection.

In **Coleman v. Block,** 562 F.Supp. 1353, 1361 (D. North Dakota, 1983), the Court also addressed 7 U.S.C. § 1981(a) with regard to notice and found that placing responsibility for discovering the loan deferral provision on the farmer-borrower was clearly unfair. More importantly, the Court pointed out that only those farmers whom the county agent informed about loan deferral would be lucky enough to apply for it.

Gary A. Edgmon met with the County Supervisor for his annual inspection conference. The Supervisor testified that he did not even remember going over the provisions of 7 C.F.R. § 1962.18. This is not unlike the **Coleman** case where shear luck determined whether the farmer-borrower was informed of an important right. Additionally, as in the **Coleman** case, it is clearly unfair to place the responsibility of discovering or rediscovering the right to post-disposition approval on the farmer-borrower. This is especially so because the penalties involved for conversion of collateral are so much greater. More effective notice is required by Due Process.

CONCLUSION

For the above reasons, this petition for certiorari should be granted.

Respectfully submitted,

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PUBLISH **Filed 12/20/91**

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,	)	
Plaintiff-Appellee,	)	
v.	)	
	)	No. 91-6077
	)	and 91-6078
GARY A. EDGMON and	)	
JIMMY W. EDGMON,	)	
Defendants-Appellants.	)	

APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF OKLAHOMA

(D. C. No. CR-90-186-T)

John F. Arens, Arens & Alexander, Fayetteville, Arkansas, (Marjorie M. Kesl and Lee H. Linzay, Jr. also of Arens & Alexander, and Mack Martin, Oklahoma City, Oklahoma, with him on the brief) for defendants-appellants.

Vicki Zemp Behenna, Assistant U. S. Attorney, Oklahoma City, Oklahoma, (Timothy D. Leonard U. S. Attorney with her on the brief) for plaintiff-appellee.

Before Baldock and Ebel, Circuit Judges, and **A. Anderson,** Senior District Judge.*

A. Anderson, District Judge.

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*Honorable Aldon J. Anderson, Senior United States District Judge for the District of Utah, sitting by designation.

On December 10, 1990, a jury convicted appellants/co -defendants Gary A. Edgmon ("Edgmon") and Jimmy W. Edgmon ("Edgmon, Sr.") each of four counts of conversion of Farmers' Home Administration collateral in violation of 19 U.S.C. § 658 and one count of conspiracy to convert in violation of 18 U.S.C. § 371. Appellant Edgmon, Sr., was also found guilty of one count of money laundering in violation of 18 U.S.C. § 1956(a)(1)(B)(i). Appellants now challenge their convictions arguing that 1) the evidence presented was insufficient to support a finding of intent to defraud; 2) the verdict was contrary to the great weight of the evidence; 3) appellants' due process rights were violated; 4) the prosecution failed to present substantial exculpatory evidence to the grand jury; and 5) the money laundering charge violated the Double Jeopardy Clause.

I.

Appellants are both farmers in Oklahoma as well as father and son. In October of 1987, Edgmon obtained a loan from the Farmers Home Administration (FmHA) for $200,000. Edgmon granted FmHA a security interest in his cattle and other items to secure the loan. Edgmon made payments on the loan that amounted to $12,800. paid on the principal amount. In August of 1988, Edgmon applied for a new loan of $12,800 which would return him to the $200,000 maximum credit limit. FmHA approved the new loan to Edgmon in October of 1988. Edgmon and FmHA then entered a new loan agreement and Edgmon received the additional funds from FmHA. *See* App. at 137-143(d).

During May, June, and July of 1989, Edgmon sold a substantial number of his cattle that served as security for his FmHA loans. Edgmon sold the cattle through his father, Edgmon, Sr., in four separate transactions. The cattle were sold in Edgmon, Sr., name and the purchasers paid for the cattle by issuing checks payable to Edgmon, Sr. Neither FmHA's nor Edgmon's name appeared on the cattle sales in any form. *See, e.g.*, Supp. App. at 41-42 (May 2nd sale).

Sometime before June 24, 1989, Edgmon met with FmHA to apply for a new loan and to update his Farm and Home Plan form kept by FmHA. Edgmon represented to FmHA that he had a total of 450 head of cattle. App. at 181. This number was incorrect in that it failed to account for the cattle already sold by Edgmon in the name of his father, Edgmon, Sr. As a result of Edgmon's request for the new loan, FmHA scheduled with Edgmon a collateral inspection of his farm for August 8, 1989. Edgmon failed to appear for the inspection. FmHA rescheduled the inspection for August 11, 1989. On August 11, 1989, Edgmon appeared at the FmHA office and informed an FmHA representative that he had sold his cattle securing his previous FmHA loans. Trans. Vol. I at 56. On August 11, 1991, FmHA sent a letter to Edgmon demanding restitution of the proceeds of the sale of the collateral, approximately $140,000, and warning that if he failed to resolve the problem, FmHA would refer the claim for criminal prosecution. App. at 182(a). The problem was not resolved and FmHA referred the matter to the United States Attorney's Office. After a trial, a

jury returned criminal convictions against Edgmon and Edgmon, Sr., for selling chattel securing FmHA loans without authorization and conspiring to convert the chattel. The jury also convicted Edgmon, Sr., of money laundering. Both challenge their convictions.

II.

A. Motion For Judgment of Acquittal.

Appellants both assert that the trial court erred in denying their motions for judgment of acquittal based on insufficiency of the evidence presented. On appellate review of denial of "a motion for acquittal under Fed. R. Crim. P. 29(a), the issue is whether, taken in the light most favorable to the government, there is substantial evidence from which a reasonable jury might properly find the defendant guilty beyond a reasonable doubt." *United States v. Johnson*, 911 F.2d 1394, 1399 (10th Cir. 1990) (citation omitted). Defendants argue that substantial evidence does not exist to support their convictions for conversion and conspiracy to convert. Defendant Edgmon, Sr., also alleges that his conviction for money laundering is not supported by substantial evidence.

1. Conversion and Conspiracy to Convert.

The jury convicted defendants of four counts each of conversion in violation of 18 U.S.C. § 658. Section 658 provides in pertinent part:

> Whoever, with intent to defraud, knowingly conceals, removes, disposes of, or converts to his own use or to that of another, any property mortgaged or pledged or held by, ... the

Secretary of Agriculture acting through the Farmers' Home Administration, ... shall be fined ... or imprisoned ... or both.

18 U. S. C. § 658. *See United States v. Garth*, 773 F.2d 1469, 1476 (5th Cir. 1985), *cert. denied*, 476 U. S. 1140 (1986). Defendants argue that the element of intent to defraud was not supported by substantial evidence. Specifically, defendants argue that the evidence demonstrated that Edgmon believed he had the authority to sell the cattle and, therefore, neither defendant had an intent to defraud. Defendants argue this failure of proof on the conversion charge also invalidates their convictions for conspiracy to convert.

After reviewing the record on appeal, we find that substantial evidence exists from which a reasonable jury could conclude that Edgmon acted with intent to defraud. The nature of the sales themselves support the jury findings. The sales of the FmHA collateral were made by Edgmon's father, Edgmon, Sr. The sales were made in the name of Edgmon, Sr., and the payment checks were payable to Edgmon, Sr., alone. The sales were structured in this manner even though the cattle sold were owned by Edgmon and not by Edgmon, Sr.

Further, at trial, defendant Edgmon testified that he knew that any check for the sale of FmHA collateral had to be issued in his name and FmHA's name. Supp. App. at 141. Edgmon testified he had made sales in the past and so knew that FmHA's name had to be on the check but, nonetheless, sold his cattle under his father's name and received payment in

his father's name. *See id.* Thus, Edgmon's own testimony is sufficient to support a reasonable inference that, at the very least, Edgmon knew the form of the cattle sales was improper yet proceeded with them anyway.

Additionally, on June 23, 1989, Edgmon met with an FmHA representative to fill out an FmHA loan related form for an additional FmHA loan. On that day, Edgmon represented that he had 450 head of cattle to use as collateral for a new loan. App. at 181. Edgmon made no mention that he had already sold some of the cattle he had used for collateral for his previous FmHA loans. To process Edgmon's new loan application, FmHA had to conduct a collateral inspection. Such an inspection was scheduled for August 8, 1989. Trans. Vo.. I, at 52-54. Edgmon met with the FmHA representative but canceled the inspection and failed to inform FmHA that he had already sold much of the cattle he was offering as collateral. *Id.* Just before the second scheduled collateral inspection, Edgmon finally informed FmHA that he did not have the cattle he had claimed could serve as collateral because he had sold many of them. *Id.* at 56. From these facts, a reasonable jury could infer that Edgmon was attempting to conceal the ongoing sales of collateral from FmHA and actively misrepresenting the amount of cattle he had available to serve as collateral and further infer such actions indicated an intent to defraud. This, when taken with Edgmon's testimony that he knew the form of the cattle sales was improper, constitutes substantial evidence from which a reasonable jury could find that Edgmon acted with intent to deceive.

2. Money Laundering.

Defendant Edgmon, Sr., challenges the district court's refusal to enter a judgment of acquittal on the count of money laundering in violation of 18 U.S.C. § 1956 based on insufficiency of the evidence. One of the elements the government must prove beyond a reasonable doubt to convict under § 1956 money laundering is that the accused acted with intent to conceal or disguise the nature or source of proceeds of an illegal activity such as conversion of FmHA collateral. 18 U.S.C. § 1956(a)(1)(B)(i). Defendant Edgmon, Sr., argues that the jury finding that he acted with intent to conceal the source of the funds is not supported by substantial evidence.

In asserting his position, Edgmon, Sr., relies on the case of *United States v. Sanders*, 929 F.2d 1466, 1470-73 (10th Cir. 1991). The Sanders case involved the proceeds of drug transactions. The drug dealers purchased automobiles with the proceeds of those drug transactions and were later convicted of money laundering based on the automobile purchases. In the *Sanders* opinion we interpreted § 1956. We held that merely spending the proceeds of illegal activities does not violate the money laundering statute. *Id.* at 1472. We noted that,

> the purpose of the money laundering statute is to reach commerical transactions intended (at least in part) to disguise the relationship of the item purchased with the person providing the proceeds and that the proceeds used to make the purchase were obtained from illegal activities.

Id. In holding that the defendants in Sanders did not violate § 1956, we emphasized that no third parties were involved and no effort was made to conceal the identity of the defendants as the purchasers. *Id.*

The facts now before us are significantly different from those presented in *Sanders*, and, unlike the *Sanders* facts, support a finding of a violation of the money laundering statute. In this case, a third party was used for the transaction. Defendant Gary Edgmon owned the cattle in his own name. The cattle served as collateral for a loan to Gary Edgmon in Gary Edgmon's name. The sales, however, were made by his father, Edgmon, Sr., in Edgmon, Sr.'s name. Payment for the cattle was made to Edgmon, Sr., not the true owner of the cattle, Gary Edgmon. After receiving the proceeds of the conversions in his name, Edgmon, Sr., used a substantial portion of the proceeds to purchase a 144 acre tract of land and a new tractor. supp. App. at 49, 52-53. Edgmon, Sr., then used all of his equity in the land and the tractor to obtain a loan from a local bank. App. at 176, 179. The net effect was to take the proceeds of the conversion, pass them through a seller and a bank, and wind up with a check for an amount essentially equivalent to the original proceeds of the conversions. Edgmon, Sr., then paid a large portion of the proceeds to his son, Edgmon, the true owner of the sold cattle. These involved transactions, unlike the simple automobile purchases in *Sanders*, certainly support a finding under the money laundering statute of intent to conceal the origin or nature of the proceeds of unlawful activity.

B. Motion For a New Trial

Defendants next argue that the district court committed error by refusing to grant their motion for a new trial. On appeal, we review a district court's denial a motion for a new trial for an abuse of discretion. *United States v. McIntyre*, 836 F.2d 467, 472 (10th Cir. 1987). In contending that the district court abused its discretion, defendants merely reassert the arguments they made under their challenge to the refusal to enter judgment of acquittal. For the reasons discussed in the preceding section, therefore, we also reject defendants' challenge to the district court's failure to grant a new trial.

C. FmHA's Failure To Follow FmHA Regulations.

Next, defendants challenge their convictions on what is presumably some form of a denial of due process argument. Defendants assert that FmHA failed to follow its own regulations in referring their case to the United States Attorney's Office for criminal prosecution. From this allegation, defendants make the leap of logic that FmHA's departure from its regulations raises a defense for them to the criminal prosecution by the United States Attorney's Office. Defendants cite no authority in support of this position.[1]

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[1]In the absence of any useful authority provided by the parties, we have attempted to identify other published cases in which defendant's theory has been presented to a court. We find four published opinions in which the deciding court was faced with an argument essentially the same as that offered by defendants. The argument did not prevail in any of the four cases. *See United States v. Fields*, 592 F.2D 638, 644-46 (2nd Cir.

Under the facts and argument presented to us by counsel, we find no violation of due process. The regulations cited by defendants contemplate an orderly procedure for a local FmHA commissioner to refer a matter to the United States Attorney's Office for criminal investigation and possible prosecution. The regulations state that when a commissioner discovers an unauthorized sale of FmHA collateral, corrective action must be taken. 7 C.F.R. § 1962.18(a). The regulations then direct that the commission notify the borrower of the unauthorized sale and demand restitution of the proceeds from the borrower. 7 C.F.R. § 1962.18(b). The notice should also inform the borrower that if restitution is not made, the matter will be referred for criminal prosecution. *See* Guide Letter 1962-A-5. The commissioner in this case sent just such a notice. App. at 182(a). While the commissioner may or may not have fully complied with FmHA regulations regarding post disposition approval of the unauthorized sale, the reference of the case to the United States Attorney's Office followed an orderly

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1978) (rejecting claim that informal criminal reference procedure of Securities and Exchange Commission violated due process and statutes and should invalidate conviction); *United States v. Hirt*, 465 F. 2d 177, 178-78 (9th Cir. 1972) (rejecting argument that criminal reference local draft board violated regulations and thus due process thereby invalidating conviction); *United States v. Archer*, 455 F.2d 193, 195 10th Cir. 1972), *cert. denied* 409 U.S. 856 (9172) (rejecting claim that conviction should be overturned because local draft board referred case for criminal prosecution prematurely in violation of regulations and thereby denied due process); *United States v. Bloom*, 450 F. Supp. 323, 328-29 (E.D. Pa. 1978) (rejecting claim that Securities and Exchange Commission violated defendant's process rights by informally referring case for criminal prosecution). We do not presume to represent that these four opinions are the only published cases ruling on defendants' theory. The research of a dispassionate

pattern. We find no violation of due process based on the arguments made by defendants. *Cf. United States v. Garth*, 773 F.2d 1469, 1473-74 (5th Cir. 1985) (finding that FmHA regulations regarding procedures for civil remedy for conversation violate due process offers no defense to prosecution for criminal conversion).

D. Grand Jury Evidence.

Defendants also challenge their convictions on the grounds that the government failed to present substantial exculpatory evidence to the grand jury as required by *United States v. Williams*, 899 F.2d 898 (10th Cir. 1990). Defendants assert that a government witness presented testimony to the grand jury that was misleading and inaccurate with respect to a crucial element of the crimes alleged. Defendants argue this misleading testimony undermines the reliability of the grand jury indictment and, therefore, entitles them to have their convictions based on that indictment set aside.

We are not persuaded by defendants' argument. In their analysis, defendants fail to account for *United States v. Mechanik*, 475 U.S. 66

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decision-maker, no matter how conscientious, can never replace the dedicated research efforts of a zealous advocate.

These four cases do not decide for us, unfortunately, the issue now presented. Three of the cases are distinguishable on significant points and so offer little guidance. *See Fields*, 592 F.2d at 644-46; *Hirt*, 465 F.2d at 178-79;; *Bloom*, 450 F. Supp. at 328-29. While the fourth appears to be directly on point, this court dismissed the due process argument out of hand without discussion or meaningful analysis. *See Archer*, 455 F-2d at 195 ("This argument is without merit"). These cases serve only to indicate a less than enthusiastic judicial attitude toward the novel theory propounded by defendants and the need for thorough argument and research to support such a novel theory.

(1986). In *Mechanik*, the Supreme Court was faced with a factual situation analogous to that now presented this court. The prosecution had violated Federal Rule of Criminal Procedure 6(d) by having two law enforcement agents testify in tandem. The grand jury issued an indictment following this improper procedure and, after a trial, a petit jury convicted the defendants of the crimes charged in the indictment. After the jury verdict, the defendants challenged their convictions on the basis of the error in the grand jury process. The Court found that the petit jury's verdict of guilt beyond a reasonable doubt rendered the procedural error in the grand jury charging process harmless. *Id.* at 73. In reaching its decision, the Court understood that the grand jury's role is merely to determine whether probable cause exists and not to determine guilt. The court noted, "We believe that the petit jury's verdict of guilty beyond a reasonable doubt demonstrates a *fortiori* that there was probable cause to charge the defendants with the offenses for which they were convicted. Therefore, the convictions must stand despite the rule violation." *Id.* at 67.

Though the alleged error in the grand Jury proceedings in this case was arguable more significant than that committed in *Mechanik*, we find the reasoning of the Supreme Court applicable. The petit jury reviewed the same allegedly misleading evidence and defendants' "substantial exculpatory evidence" and found defendants guilty beyond a reasonable doubt. That finding of guilt beyond a reasonable doubt after having heard the evidence defendants allege should also have been presented to the

grand jury "means ... that there was probable cause to believe that the defendants were guilty as charged." *See id.* at 70.

E. Double Jeopardy And Money Laundering.

Finally, defendant Edgmon, Sr., challenges his conviction for money laundering on the grounds that the conviction violates the Double Jeopardy Clause. Edgmon, Sr., contends that his conviction for both conversion and money laundering constitutes multiple punishments for the same offense. Edgmon, Sr., argues that the applicable double jeopardy test is the different fact test enumerated in *Blockburger v. United States*, 284 U.S. 299, 394 (1932). Under the *Blockburger* test the inquiry is whether each statutory provision defining the crimes requires proof of a fact that the other does not. *Id.* The government does not dispute defendants' contention that, under this test, the crime of conversion does not require proof of a fact that money laundering does not because the crime of conversion is an element of money laundering.[2] We, therefore, assume that defendant Edgmon, Sr., is correct in his assertion that conversion and money laundering "fail" the *Blockburger* test.

We do not find, however, that the *Blockburger* test is decisive of

---

[2]The money laundering statute provides in pertinent part:

Laundering of monetary instruments

(a) (1) Whoever, knowing that the property involved in a financial transaction represented the proceeds of some form of unlawful activity –

...

(A) (i) with the intent to promote the carrying on of *specified unlawful activity;*

defendant's challenge. In a more recent opinion from the Supreme Court, *Garrett v. United States*, 471 U.S. 773 (1985), the Court further explained the analysis under a Double Jeopardy Clause challenge and the role of *Blockburger* in that analysis. In *Garrett*, the Court elaborated that a double jeopardy challenge requires a two-step analysis. *Id.* at 779, 786. In the first step, the court must determine whether the Congress intended each statutory violation to be a separate offense and whether one violation was intended to be a lesser included offense of the other. *Id.* at 779, 784. The *Blockburger* test is an aspect of this first step and is designed to help determine legislative intent. *Id.* at 779. If Congress did not intend the statutory violations to be separately punishable offenses, the analysis ends. If the Congress intended the statutory violations to be separate punishable offenses, the court must move to the second step of the analysis. *Id.* at 786. In the second step, the court must determine whether separate prosecutions or punishments for the offenses violates the Due Process Clause. *Id.*

...

(B) ... knowling that the transaction is designed in whoole or in part-

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of *specified unlawful activity;*

...

shall be sentenced to a fine ... or imprisonment ... or both.

...

(7) the term *"specified unlawful activity"* means-

...

(D) an offense under ..., *section 658 (relating to property mortgaged or pledged to farm credit agencies) [converson].*

28 U.S.C. 1956 (emphasis added).

1. Legislative Intent.

The Court in *Garrett* applied the two-step analysis to a challenge to prosecutions for a continuing criminal enterprise under 21 U.S.C. § 848 and one of the underlying predicate offenses. As in the present case, the two offenses "failed" the *Blockburger* test because one served as an element of the other. *See id.* at 779. The Court, however, noted that *Blockburger* is not decisive and in only one method of determining legislative intent. *See id.* at 778-79. The true test is whether the legislature intended the violations of the two different statutory provisions to be separately prosecutable offenses. *See id.* The Court determined that the legislative history and statutory framework of the continuing criminal enterprise statute clearly indicated that Congress intended it to be a separate and supplemental offense, in addition to, rather than instead of, the predicate offense. *Id.* at 784-86.

Like the continuing criminal enterprise statute reviewed in *Garrett*, Congress appears to have intended the money laundering statue to be a separate crime distinct from the underlying offense that generated the money to be laundered. The senate report on § 1956 expresses the need for a federal criminal offense aimed directly at the activity of laundering the money gained from illegal activity. The Senate report on the money laundering bill makes plain that the bill was intended to create a "new Federal offense against money laundering." Sen. R. 99-433 at 4. The discussion throughout the report is of the gap in the criminal law with

respect to the post-crime hiding of the illgotten gains. *See id.* at 1-9. The Senate report and the statute itself indicate that the Congress intended simply to add a new criminal offense to punish activity that was not previously punished criminally. Congress aimed the crime of money laundering at conduct that follows in time the underlying crime rather than to afford an alternative means of punishing the prior "specified unlawful activity." Congress enacted the money laundering statute to provide a punishment in addition to other punishment rather than instead of other punishment. We find that Congress intended money laundering and the "specified unlawful activity" to be separate offenses separately punishable.

2. Double Jeopardy Clause.

Having determined that Congress intended money laundering to be a separate offense from the "specified illegal activity" that is its predicate offense, and that it intended to permit prosecutions for both offenses, we must now determine whether prosecution for both offenses, we must now determine whether prosecution for both offenses violates the Double Jeopardy Clause. The Double Jeopardy Clause states, "nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb." U.S. Const. amend. V. "The critical inquiry is whether [the broader offense] is considered the 'same offense' as one or more of its predicate offenses within the meaning of the Double Jeopardy Clause." *Garrett*, 471 U. S. at 786. In pursuing this inquiry, the *Garrett* court looked to the general meaning of the term "same" and to the allegations of the actual crimes

charged and asked if they were the "same offense." *Id.*

Edgmon, Sr., was charged with conversion and money laundering. In the conversion charge, Edgmon, Sr., was alleged to have assisted his son in selling cattle that served as collateral for an FmHA loan with the intent to defraud. The mere assistance with the sale of the cattle, if accompanied by the intent to defraud, was a sufficient actus reus for conversion in the context of this case. The money laundering charge alleged that Edgmon, Sr., helped disguise the origin of the proceeds of those sales by receiving the money in his name rather than the son's, putting the proceeds in his own account, using the proceeds to obtain assets, then using those assets to obtain a new loan and once again hold the proceeds of the sales in an easily negotiable form. While some of the evidence presented on the two offenses may overlap, the actual conduct and the nature of the conduct constituting the two offenses conduct and the nature of the conduct constituting the two offenses are not the "same." One is simply a sale of cattle. The other is a line of financial transactions as they held at the beginning of the transactions. To convict of money laundering, the jury had to find that Edgmon, Sr., not only assisted in the conversion of FmHA collateral but that he then attempted to take the proceeds of that conversion and enter financial transactions designed to conceal the origin of those proceeds.

We find that the offenses of conversion and money laundering are analogous to the offense considered by the Supreme Court in *Garrett*. Therefore, prosecution and punishment for both money laundering and

conversion does not violate the Double Jeopardy Clause.

III.

Having examined the arguments propounded by defendants, we find no reason to overturn their convictions. We have reviewed the record and find that substantial evidence exists from which a reasonable jury could conclude the defendants possessed the requisite mens rea for conversion of FmHA collateral. Substantial evidence also existed to support a finding that defendant Edgmon, Sr., had the mens rea necessary to be guilty of money laundering . We do not find that the purported violation by FmHA of its regulations should act to bar defendant' prosecution or invalidate their convictions. Furthermore, the finding by the petit jury of guilty beyond a reasonable doubt cured the alleged evidentiary errors that may have been committed in the grand jury charging process. Finally, we find that prosecution of both money laundering and its predicate offense, conversion of FmHA collateral, does not violate the Double Jeopardy Clause.

AFFIRMED.

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

UNITED STATES COURT HOUSE

DENVER, COLORADO 80294

ROBERT L. HOECKER (303) 844-31

CLERK December 23, 1991 FTS 504-31

Mr. Timothy D. Leonard

Ms. Vicki Zemp Behenna

Att. U. S. Attorney

Office of the United States Attorney

200 N. W. Fourth Street

Room 4434 Federal Courthouse Building

Oklahoma City, OK 73102

Mr. Lee H. Linzay, Jr.

P.O. Box 3257

Fayetteville, AR 72702

Mr. John F. Arens

Ms. Carol L. Arens

Arens & Alexander

31 E. Center Street

P.O. Box 1928

Fayetteville, AR 72702

Mr. Sam H. Johnson

304 Security Bank Building

P.O. Box 465

Lawton, OK 73502

Re: 91-6077, USA v. Edgmon (Gary)

91-6078, USA v. Edgmon (Jimmy)

(Lower docket: CR-90-186-T,)

Dear Counsel:

Enclosed is a copy of the opinion entered today in the caption case. Judgment in accordance with the opinion has been entered today.

Please call this office if you have questions.

Sincerely,

ROBERT L. HOECKER

Clerk

Signed by Opal A. Carter

By: Opal A. Carter

Deputy Clerk

RLH:oac

Enclosure

cc: Honorable Ralph G. Thompson

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA **JUDGMENT IN A CRIMINAL CASE**

(For Offenses Committed On or After November 1, 1987)

v.

GARY A. EDGMON **Case No. CR-90-126-T**

(Name of Defendant) ***Lee H. Linzay, Jr., and John Arens***

Defendant's Attorney

THE DEFENDANT:

___ pleaded guilty to count(s) _____

X was found guilty on count(s) 1, 2, 3, 4, and 5 after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offenses:

Title & Section	**Nature of Offense**	**Date Offense Concluded**	**Count Number(s)**
18:371	Conspiracy to commit offense against the United States	Dec. 1989	1
18:658 & 2	Knowingly conceal, remove, dispose of and convert to own use mortgaged property; aid and abet	Dec. 1989	2,3,4,& 5

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

____ The defendant has been found not guilty on count(s) _____ and is discharged as to such count(s).

____ Count(s) _____(is)(are) dismissed on the motion of the United States.

__X__ It is ordered that the defendant shall pay a special assessment of $50 per count, $250 for count(s) 1, 2, 3, 4, and 5 which shall be due __X__ immediately ____as follows:

IT IS FURTHER ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No.: 445-56-0251

Defendant's Date of Birth: June 14, 1956

February 8, 1991
Date of Imposition of Sentence

Defendant's Mailing Address:

720 E. Nevada

Walters, OK 73572

Signed by Judge Ralph G. Thompson
Signature of Judicial Officer

Ralph G. Thompson
United States District Judge
Name & Title of Judicial Officer

Defendant's Residence Address:

720 E. Nevada

February 8, 1991

Date

Walters, OK 73572

ATTEST: A true copy of the original

Robert D. Dennis, Clerk

IMPRISONMENT

The Defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 12 months on each of counts 1, 2, 3, 4, and 5 to run concurrently.

__X__ The court makes the following recommendations to the Bureau of Prisons:

El Reno F.C.I., El Reno, Oklahoma

____ The defendant is remanded to the custody of the United States marshall.

____ The defendant shall surrender to the United States marshall for this district.

a.m.

____ at _____ p.m. on _____.

____ as notified by the United States marshal.

__X__ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons.

__X__ by 12:00 noon on Friday, March 8, 1991.

____ as notified by the United States marshal.

____ as notified by the probation office.

RETURN

I have executed this judgment as follows:

_____

_____

_____

_____

_____

_____

_____

Defendant delivered on _____ to _____

_____ at _____

_____, with a certified copy of this judgment.

_____

United States Marshal

By: _____

Deputy Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 2 years with the special condition that the defendant participate in alcoholic rehabilitation aftercare as directed by the U.S. Probation Office.

While on supervised release, the defendant shall not commit another federal, state, or local crime and shall not illegally possess a controlled substance. The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). If this judgment imposes a restitution obligation, it shall be a condition of supervised release that the defendant pay any such restitution that remains unpaid at the commencement of the term of supervised release. The defendant shall comply with the following additional conditions:

____ The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

____ The defendant shall pay any fines that remain unpaid at the commencement of the term of supervised release.

____ The defendant shall not possess a firearm or destructive device.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment the defendant shall not commit another federal, state or local crime. In addition:

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer within 72 hours of any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;

8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed or administered;

9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;

11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) the defendant shall not enter into any agreement to act as an informer as a special agent of a law enforcement agency without the permission of the court;

13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record of personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirements.

RESTITUTION AND FORFEITURE

RESTITUTION

_X_ The defendant shall make restitution to the following persons in the following amounts:

Name of Payee	Amount of Restitution
Farmers Home Administration	$153,062.14

Payments of restitution are to be made to:

____ the United States Attorney for transfer to the payee(s).

_X_ the payee(s).

Restitution shall be paid:

____ in full immediately.

_X_ in full not later than the end of defendant's term of supervised release.

____ in equal monthly installments over a period of____months. The first payment is due on the date of this judgment. Subsequent payments are due monthly thereafter.

____ in installments according to the following schedule of payments:

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

FORFEITURE

____ the defendant is ordered to forfeit the following property to the United States:

STATEMENT OF REASONS

____ The court adopts the factual findings and guideline application in the presentence report.

OR

__X__ The court adopts the factual findings and guideline application in the presentence report except (see attachment, if necessary): The Court sustained the defendant's objection to the dates used when calculating the guidelines. The Court found that October of 1989 was the last date of the offense.

Guideline Range Determined by the Court:

Total Offense Level: 12

Criminal History Category: I

Imprisonment Range: 10 to 16 months

Supervised Release Range: 2 to 3 years

Fine Range: $153,062.14 to $250,000

__X__ Fine is waived or is below the guideline range, because of the defendant's inability to pay.

Restitution: $153,026.14

____ Full restitution is not ordered for the following reason(s):

____ The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

OR

_X_ The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reason(s):

OR

The sentence departs from the guideline range

____ upon motion of the government as a result of defendant's substantial assistance.

____ for the following reason(s):

UNITED STATES DISTRICT COURT

WESTERN District of OKLAHOMA

UNITED STATES OF AMERICA JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

v.

JIMMY W. EDGMON — Case Number: CR-90-186-T

(Name of Defendant) — Mack Martin

Defendant's Attorney

THE DEFENDANT:

____ pleaded guilty to count(s) _____

____ was found guilty on count(s) 1, 2, 3, 4, 5, 6, and 7 after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following defenses:

Title & Section	**Nature of Offense**	**Date Offense Concluded**	**Court Number(s)**
18:371	Conspiracy to commit offense against the U.S.	10/12/89	1
18:658 &2	Knowingly conceal, remove, dispose of and convert to own use mortgaged property; aid and abet	10/12/89	2,3,4,5
18:1956 (a)(1)(B)(i)	Money laundering	10/12/89	6
18:982	Forfeiture Count	10/12/89	

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

____ The defendant has been found not guilty on count(s) _____

_____and is discharged as to such count(s).

____ Count(s) _____(is)(are) dismissed on the motion of the United States.

____ It is ordered that the defendant shall pay a special assessment of $50 per count, $300, for count(s) 1, 2, 3, 4, 5, and 6, which shall be due

__X__ immediately ____as follows:

IT IS FURTHER ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, ad special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No.: 446-32-9646

Defendant's Date of Birth: February 28, 1935

February 8, 1991

Date of Imposition of Sentence

Defendant's Mailing Address:

Signed by Judge Ralph G. Thompson

Route 1, Box 285

Signature of Judicial Officer

RALPH G. THOMPSON

Walters, Ok 73572

UNITED STATES DISTRICT JUDGE

Name & Title of Judicial Officer

Defendant's Residence Address:

Route 1, Box 285

February 8, 1991

Date

Walters, OK 73572

ATTEST: A true copy of the original

Robert D. Dennis, Clerk

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 33 months on each of counts 1, 2, 3, 4, 5, and 6 to run concurrently.

_X_ The court makes the following recommendations to the Bureau of Prisons:

El Reno F.C.I., El Reno, Oklahoma

____ The defendant is remanded to the custody of the United States marshal.

____ The defendant shall surrender to the United States marshal for this district.

a.m.

____ at_____p.m. on _____

____ as notified by the United States marshal.

_X_ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons.

_X_ by 12:00 noon on Friday, March 8, 1991.

____ as notified by the United States marshal.

____ as notified by the probation office.

RETURN

I have executed this judgment as follows:

_____

_____

_____

_____

_____

_____

_____

Defendant delivered on_____to_____

_____ at _____

_____, with a certified copy of this judgment.

_____

United States Marshal

By:_____

Deputy Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 2 years on each of counts 1, 2, 3, 4, 5, and 6 to run concurrently.

While on supervised release, the defendant shall not commit another federal, state, or local crime and shall not illegally possess a controlled substance. The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). If this judgment imposes a restitution obligation, it shall be a condition of supervised release that the defendant pay any such restitution that remains unpaid tat the commencement of the term of supervised release. The defendant shall comply with the following additional conditions:

____ The defendant shall report in person to the probation office in the district to which the defendants is released within 72 hours of release from the custody of the Bureau of Prisons.

____ The defendant shall pay any fines that remain unpaid at the commencement of the term of supervised release.

____ The defendant shall not possess a firearm or destructive device.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer within 72 hours of any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia restricted to such substances, except as prescribed by a physician;

8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;

11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendants criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendants compliance with such notification requirement.

RESTITUTION AND FORFEITURE

RESTITUTION

_X_ The defendant shall make restitution to the following persons in the follow amounts:

Name of Payee	Amount of Restitution
Farmers Home Administration	$153,062.14

Payments of restitution are to be made to:

____ the United States Attorney for transfer to the payee(s).

_X_ the payee(s).

Restitution shall be paid:

____ in full immediately.

_X_ in full not later than the end of defendant's term of supervised release.

____ in equal monthly installments over a period of ____ months. The first payment is due on the date of this judgment. Subsequent payments are due monthly thereafter.

____ in installments according to the following schedule of payments:

Any payment shall be divided proportionately among the payees names unless otherwise specified here.

FORFEITURE

X The defendant is ordered to forfeit the following property to the United States:

On count 7, defendant is to forfeit the property described in that count, or such other property as the Court may order substituted as authorized by law.

STATEMENT OF REASONS

__X__ The court adopts the factual findings and guideline application in the presentence report.

OR

____ The court adopts the factual findings and guideline application in the presentence report except (see attachment, if necessary):

Guideline Range Determined by the Court:

Total Offense Level: 20

Criminal History Category: I

Imprisonment Range: 33 to 41 months

Supervised Release Range: 2 to 3 years

Fine Range: $7,500 to $638,400

__X__ Fine is waived or is below the guideline range, because of the defendant's inability to pay.

Restitution: $153,062.14 to Farmers Home Administration.

____ Full restitution is not ordered for the following reason(s):

__X__ The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

OR

____ The sentence is within the guideline range, that range exceeds 24 months and the sentence is imposed for the following reason(s):

OR

The sentence departs from the guideline range

____ upon motion of the government, as a result of defendant's substantial assistance.

____ for the following reason(s):

Q. All right. Well, now, the rules — we'll refer to them in this exhibit 35 in just a moment — but correct me if I'm wrong. Don't the rules say that when a county supervisor becomes aware that collateral has been disposed of in an unauthorized manner — now, let's just stop right there.

You did become aware that in your opinion collateral had been disposed of in an unauthorized manner. That's true, isn't it?

A. When he told me all the cattle was gone —

Q. Yes. And now this, these rules tell you exactly what you have to do then, don't they?

A. Yeah. You move over to 1962.18 and send him FHA 1962 A5 guide letter.

Q. Well, let's just — maybe you are jumping just a little fast on that. Because it seems to me, and you correct me if I'm wrong, that the rules say that you will advise him that he must supply you with the information so that yo may post — that's after, post-approve the use of the fund. Says that, didn't it?

A. Says I may post-approve, if I can.

Q. But you must notify him that he can apply for a that?

A. I notified him.

Q. Find the letter. Look in there and find the letter where you said: Gary, you can apply for post-approval. Find it.

A. Well, it's on 1962.8.

Q. Well, I know the regulation. I want to see your letter where you tell

him: Now, Gary, you can apply.

A. Has that been pulled as an Exhibit?

Q. It would be a letter — I'll direct —

A. I know what it is. He was sent the letter. I just can't find it.

Q. Look on August 11th, 1989.

A. That's when it was sent, on August 11th. I'm looking for the letter.

Q. All right.

A. It may have been pulled as an exhibit.

Q. Well, let me ask you a question; then I'll give you a copy of the letter, because I have it here. It's a Defendant's exhibit.

But just so that we are clear, isn't it true that the rules say that you have to tell him three things. One thing is that he pay the FmHA the money that he got from the sale. Two things, he replace it with other collateral; or three, he give you information to allow you to post-approve. That's right, isn't it?

A. That's right. You can post-approve sales.

Q. All right. Now, may I approach, You Honor?

THE COURT: Yes.

A. You may post-approve them.

Q. Now, that's, for identification purposes, been marked as Exhibit 28. I believe it's in Exhibit 1 of the Defendants. But you can identify that. Can you identify that?

A. This looks like the letter, but I don't know whether it's the same one or

not. I don't — I'd need to see it from my file.

Q. All right. I'll pull that one. Would you keep on looking then, please.

A. Well, this file has been shuffled around so that it may not be in order where you can find it.

Q. Do you think you wrote more than one letter about this time?

A. I wrote just the one?

Q. Just the one.

A. That's all I remember.

MR. ARENS: Let me, if I may, Your Honor, I have the original of this.

THE COURT: yes.

MR. ARENS: I'll approach the witness.

Q. (By Mr. Arens) Now, that seems to be an original. Does that have your original signature on it?

A. Yes.

Q. Now, that one is dated August 11th, 1989. Does that refresh your memory?

A. Yes.

Q. All right. Would you please read to the jury the language where you notify Gary that he can apply for post-disposition approval. Just that language.

A. "If you are going to replace the property with other property, please let FHA know as soon as possible. If, instead, you believe you possess

information that would show that this demand was in error, you should contact the county office at 875-3368 to arrange an appointment to discuss this matter and present such information."

Q. Okay. Now, that says to show that it was in error, that he didn't really dispose of the cattle.

What was he supposed to do if he did dispose of the cattle and wanted to apply for you to approve it? You didn't tell him that, did you?

A. Well, in a letter, you can get so much. This is a guide letter that I was told to send, and I sent the letter.

Q. You did not tell him that he could apply for post-disposition approval in this letter, did you?

A. He didn't come in the office to find out for me to tell him, either.

Q. One question. You did not tell him, did you?

A. it just says: Are you going to replace it?

Q. All right. Now, let's go back to these regulations. They are going to be Exhibit 35. And I remind you of your comment that you may post-approve. Okay?

THE COURT: 43?

MR. ARENS: 43.

THE COURT: Admitted without objection.

Q. (By Mr. Arens) This Exhibit 43 is the letter from Gary Edgmon dated September 27th, 1989, isn't it?

A. Yes.

Q. Now, I draw your attention just to the list of expenses. I'd like to ask you questions that relate not to the amounts in question, just to the items, whether or not they are, in your opinion, family living or farm operating expenses that you would be able to approve.

A. Yes.

Q. All of them, aren't they?

A. Yes.

Q. Every single one of them are the type that the regulations say you must approve; isn't that true?

A. Can approve.

Q. Says must. We've just been through that, Mr. Lafferty.

A. Well, if he needs the money.

Q. All right.

A. But if I made him a loan from it, I don't release it. I've already paid him — I've already provided the funds.

Q. Yes. But under 1962.18, this is the circumstance where they already went ahead and sold the cattle and spent the money and now is coming in to ask you to approve it after the mr. Prickett, your agent?

A. Yes. Why didn't he write it to me?

Q. Now, it is true, isn't it, that you reviewed this with Gary, these regulations?

A. We went over them — 19 — this is basically what's on 1962-1.

Q. but you did review 1962.17 and 1962.18 with Gary Edgmon, didn't you? You reviewed it with him?

A. I probably didn't go over 18. I just probably told him what would happen if he disposed of security. Mostly, I reviewed the form 1962-1 that we filled out in connection with the farm and home plan.

Q. Okay. You are required — I think we read that to the jury — it is true that the regulations require you to discuss the provisions of 1962.17 and 18. That's true, isn't it?

A. 17. I don't know whether it does 18 or not. Does it say 19? But I know 17, 1962.17 is required.

Q. Do you see that that part that's underlined up at the top of the page?

A. I see it.

Q. Read it to us.

A. At the time of the annual inspection, the county supervisor will discuss the provision of 1962.17 and 1962.18 of the sub-part with the borrower.

Q. All right. Now, if the borrower, Gary, says you